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FILE:



Office: California Service Center

Date: SEP 29 2006

[WAC 05 048 74610]

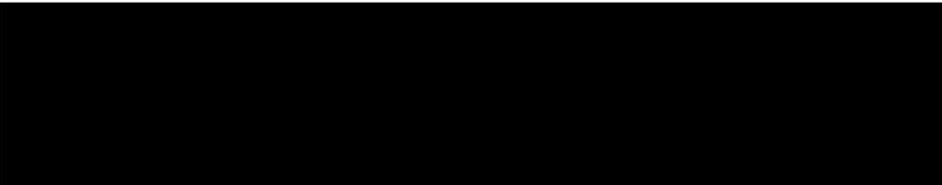
IN RE:

Applicant:



APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record reveals that the applicant filed a TPS application during the initial registration period under CIS receipt number SRC 99 201 55654. The Director, Nebraska Service Center (NSC), denied her initial application on February 3, 2004, because the applicant failed to establish her qualifying continuous residence and continuous physical presence in the United States. The applicant filed an appeal on February 27, 2004, and the NSC Director treated the appeal as a motion to reopen and approved the application on March 24, 2004.

The record also reveals that on July 1, 2002, the applicant filed a subsequent application for TPS under CIS receipt number LIN 02 234 50268. That application was denied on December 10, 2002, because the applicant did not establish her qualifying continuous residence and continuous physical presence in the United States. The applicant filed an appeal on January 13, 2003, which was dismissed by the Director of the AAO on June 11, 2003.

The applicant filed the instant Form I-821, Application for Temporary Protected Status, on November 17, 2004, and indicated that she was re-registering for TPS. The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, counsel, on behalf of the applicant, states that the basis for the director's decision is incorrect because the applicant's TPS was approved. Counsel also provides a copy of the Service's notice dated March 29, 2004, indicating that the applicant's initial TPS application was approved. In addition, counsel also provides additional documentation regarding the applicant's residence and presence in the United States.

A review of the record of proceedings reveals that the applicant's initial application for Temporary Protected Status [SRC 99 201 55654] was approved on March 24, 2004. Further, the record contains a Federal Bureau of Investigation (FBI) transmittal revealing that the applicant was arrested by the Houston Police Department on July 3, 1999, and charged with "Theft Property >=\$50 < \$500." The director must also address the applicant's past arrest.

Therefore, the case will be remanded. The director shall issue a new decision that, if adverse to the applicant, shall be certified to the AAO for review. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS. As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The case is remanded to the director for entry of a new decision.